

HOUSE BILL No. 1122

DIGEST OF INTRODUCED BILL

Citations Affected: IC 32-30-10-14; IC 36-7-9-14; IC 36-7-36.

Synopsis: Abatement of vacant or abandoned structures. Provides that a county or municipality that adopts the statute concerning the abatement of vacant structures and abandoned structures may issue an abatement notice and order to a foreclosure judgment holder in a residential mortgage foreclosure proceeding if the foreclosure judgment holder has not filed a praecipe to initiate a sheriff's sale within 180 days after the entry of the foreclosure judgment. (Current law provides for the issuance of an abatement notice and order only with respect to the owner of the property.) Provides that an abatement notice and order must direct the owner or foreclosure judgment holder to bring the vacant structure or abandoned structure into compliance with any applicable building standards required by statute, rule, or ordinance. Provides that a foreclosure judgement holder that performs, or causes to be performed, any work or action required by an abatement notice or order is not liable to the property owner, the enforcement authority, or any other person in connection with the work performed. Specifies that for purposes of the limits on the amount of civil penalties that can be imposed in a year for structures that remain vacant or abandoned for specified periods after the issuance of an abatement notice and order, a year is measured from the date of the order. Provides that if the abatement notice and order has been issued against a foreclosure judgment holder, the foreclosure judgment holder may avoid the civil penalties that would otherwise apply by filing, not later than 180 days after the date of issuance of the abatement notice and order, a praecipe with the county clerk to initiate a sheriff's sale. Provides that if a foreclosure judgment holder files a praecipe to

(Continued next page)

Effective: Upon passage; July 1, 2010.

Riecken, Sullivan

January 7, 2010, read first time and referred to Committee on Financial Institutions.



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initiate a sheriff's sale within 180 days after the issuance of the abatement notice and order and subsequently cancels the sale, the foreclosure judgment holder is liable for: (1) any civil penalties that otherwise would have applied during the 180 day period; (2) any civil penalties that accrue after the 180 day period; and (3) certain costs incurred by the sheriff in preparing for the sheriff's sale before its cancellation. Provides that civil penalties collected for structures that remain vacant or abandoned shall be deposited in: (1) the local unsafe building fund; or (2) another fund or account specified in the rules and procedures adopted by the legislative body. Provides that if any civil penalties assessed against a foreclosure judgment holder remain unpaid after a subsequent sheriff's sale of the property, the unpaid civil penalties shall be paid from the proceeds of the sheriff's sale. Requires a county or municipality that, before July 1, 2010, has adopted: (1) the statute concerning the abatement of vacant structures and abandoned structures; and (2) rules and procedures to enforce the statute; to amend its rules and procedures not later than August 1, 2010, to comply with changes to the statute.

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Introduced

Second Regular Session 116th General Assembly (2010)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2009 Regular and Special Sessions of the General Assembly.

HOUSE BILL No. 1122

A BILL FOR AN ACT to amend the Indiana Code concerning property.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 32-30-10-14, AS AMENDED BY
2 P.L.182-2009(ss), SECTION 390, IS AMENDED TO READ AS
3 FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 14. The proceeds of a
4 sale described in IC 32-29-7 or section 8 or 12(b) of this chapter must
5 be applied in the following order:
6 (1) Expenses of the offer and sale, including expenses incurred
7 under IC 32-29-7-4 or section 9 of this chapter (or IC 34-1-53-6.5
8 or IC 32-15-6-6.5 before their repeal).
9 (2) The amount of any property taxes on the property sold:
10 (A) that are due and owing; and
11 (B) for which the due date has passed as of the date of the
12 sheriff's sale.
13 The sheriff shall transfer the amounts collected under this
14 subdivision to the county treasurer not more than ten (10) days
15 after the date of the sheriff's sale.



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(3) For a sale that occurs after June 30, 2010, the amount of any unpaid civil penalties against the foreclosure judgment holder under IC 36-7-36-10(g).

~~(3)~~ (4) Any amount of redemption where a certificate of sale is outstanding.

~~(4)~~ (5) The payment of the principal due, interest, and costs not described in subdivision (1).

~~(5)~~ (6) The residue secured by the mortgage and not due.

~~(6)~~ (7) If the residue referred to in subdivision ~~(5)~~ (6) does not bear interest, a deduction must be made by discounting the legal interest.

In all cases in which the proceeds of sale exceed the amounts described in subdivisions (1) through ~~(6)~~; (7), the surplus must be paid to the clerk of the court to be transferred, as the court directs, to the mortgage debtor, mortgage debtor's heirs, or other persons assigned by the mortgage debtor.

SECTION 2. IC 36-7-9-14, AS AMENDED BY P.L.169-2006, SECTION 66, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 14. (a) The enforcement authority shall establish in its operating budget a fund designated as the unsafe building fund. Any balance remaining at the end of a fiscal year shall be carried over in the fund for the following year and does not revert to the general fund.

(b) Money for the unsafe building fund may be received from any source, including appropriations by local, state, or federal governments, and donations. The following money shall be deposited in the fund:

(1) Money received as payment for or settlement of obligations or judgments established under sections 9 through 13 and 17 through 22 of this chapter.

(2) Money received from bonds posted under section 7 of this chapter.

(3) Money received in satisfaction of receivers' notes or certificates that were issued under section 20 of this chapter and were purchased with money from the unsafe building fund.

(4) Money received for payment or settlement of civil penalties or fines imposed under section 7 of this chapter **or under IC 36-7-36-10.**

(5) Money received from the collection of special assessments under section 13.5 of this chapter.

(c) Money in the unsafe building fund may be used for the expenses incurred in carrying out the purposes of this chapter **or IC 36-7-36,** including:

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(1) the cost of obtaining reliable information about the identity and location of each person who owns a substantial property interest in unsafe premises;

(2) the cost of an examination of an unsafe building by a registered architect or registered engineer not employed by the department;

(3) the cost of surveys necessary to determine the location and dimensions of real property on which an unsafe building is located;

(4) the cost of giving notice of orders, notice of statements of rescission, notice of continued hearing, and notice of statements that public bids are to be let in the manner prescribed by section 25 of this chapter;

(5) the bid price of work by a contractor under section 10 or sections 17 through 22 of this chapter;

(6) the cost of emergency action under section 9 of this chapter;

and

(7) the cost of notes or receivers' certificates issued under section 20 of this chapter; and

(8) any costs incurred under IC 36-7-36 with respect to a vacant structure or an abandoned structure under IC 36-7-36.

(d) Payment of money from the unsafe building fund must be made in accordance with applicable law.

SECTION 3. IC 36-7-36-2.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 2.5. As used in this chapter, "foreclosure judgment holder" means a person who may enforce a judgment and decree of sale issued after June 30, 2010, in a mortgage foreclosure proceeding subject to IC 32-30-10.5.**

SECTION 4. IC 36-7-36-7, AS ADDED BY P.L.88-2009, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 7. (a) The legislative body of a municipality or county:**

(1) may adopt this chapter by ordinance; and

(2) if the legislative body adopts this chapter by ordinance, shall adopt rules and procedures for its enforcement.

(b) This subsection applies to a legislative body that, under subsection (a) and before July 1, 2010, has adopted:

(1) an ordinance to adopt this chapter, as in effect July 1, 2009; and

(2) rules and procedures for the enforcement of this chapter, as in effect July 1, 2009.

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Not later than January 1, 2011, a legislative body to which this subsection applies shall amend the rules and procedures that, before July 1, 2010, were adopted under subsection (a). The amended rules and procedures must comply with sections 9 and 10 of this chapter, both as in effect July 1, 2010. This subsection expires July 1, 2011.

SECTION 5. IC 36-7-36-9, AS ADDED BY P.L.88-2009, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 9. (a) If an enforcement authority determines that a vacant structure or an abandoned structure exists, an abatement notice and order may be ~~sent~~ given in the manner specified in IC 36-7-9-25, or by any other method specified in the rules and procedures adopted by the legislative body under section 7 of this chapter, to the owner or, if subsection (b) applies, to a foreclosure judgment holder, that directs the owner or the foreclosure judgment holder to:

(1) abate the vacant structure or abandoned structure by cleaning and securing or boarding up the vacant structure or abandoned structure and the premises upon which it is located; ~~and~~

(2) erect fences, barriers, berms, or other suitable means to discourage:

(A) access to the vacant structure or abandoned structure; and

(B) illegal dumping or littering on the premises upon which the vacant structure or abandoned structure exists; ~~and~~

(3) perform any other action necessary to bring the vacant structure or abandoned structure into compliance with standards for building condition or maintenance required by:

(A) a statute;

(B) a rule adopted under IC 4-22-2; or

(C) an ordinance;

for human habitation, occupancy, or use.

(b) Subject to subsection (c), an abatement notice and order described in subsection (a) may be issued to a foreclosure judgment holder if the enforcement authority determines that:

(1) a judgment and decree of sale concerning the vacant structure or abandoned structure has been issued after June 30, 2010, in a mortgage foreclosure proceeding subject to IC 32-30-10.5; and

(2) the foreclosure judgment holder has not filed a praecipe with the county clerk to initiate a sheriff's sale, in accordance with the procedure set forth in IC 32-29-7-3(b), not later than one hundred eighty (180) days after the entry of the judgment

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by the court.

(c) A foreclosure judgment holder, or any director, officer, manager, employee, or agent of a foreclosure judgment holder, that performs, or causes to be performed, any work or other action required by an abatement notice and order issued to the foreclosure judgment holder under subsection (b) is not liable to any of the following upon any claim, legal or equitable, whether arising out of contract or tort, with respect to the work or action performed:

(1) The owner of the property.

(2) The enforcement authority.

(3) Any other person.

SECTION 6. IC 36-7-36-10, AS ADDED BY P.L.88-2009, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 10. (a) ~~An owner of~~ **Subject to subsection (b), if** a property ~~that~~ remains a vacant structure or an abandoned structure for at least ninety (90) consecutive calendar days **at any time after the issuance of an abatement notice and order under section 9 of this chapter, the owner or a foreclosure judgment holder, as appropriate,** may be liable for a civil penalty in the amount of five hundred dollars (\$500) per vacant structure or abandoned structure, not to exceed five thousand dollars (\$5,000) per structure per year, **as measured from the date of the abatement notice and order issued under section 9 of this chapter and as specified in subsection (e),** unless:

(1) documentation has been filed and approved by the enforcement authority that indicates the owner's **or foreclosure judgment holder's** intent to eliminate the vacant structure or abandoned structure status of the property;

(2) ~~the owner is current on all there are no~~ property taxes **and or** special assessments:

(A) **that are due and owing; and**

(B) **for which the due date has passed;**

with respect to the property; and

(3) at least one (1) of the following applies:

(A) The structure is the subject of a valid building permit for repair or rehabilitation and the owner **or foreclosure judgment holder** is proceeding diligently and in good faith to complete the repair or rehabilitation of the structure as defined in the enforcement order.

(B) The structure is:

(i) maintained in compliance with this chapter **and any**

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1 applicable statute, rule, or ordinance described in section
2 9(a)(3) of this chapter; and

3 (ii) actively being offered for sale, lease, or rent.

4 (C) The owner or foreclosure judgment holder can
5 demonstrate that the owner or foreclosure judgment holder
6 made a diligent and good faith effort to implement actions
7 approved by the enforcement authority.

8 (b) Subject to subsections (c) and (d), if the abatement notice
9 and order has been issued to a foreclosure judgment holder, the
10 foreclosure judgment holder is not liable for any civil penalty that
11 may be imposed under subsection (a) or (e) if the foreclosure
12 judgment holder files, not later than one hundred eighty (180) days
13 after the date of issuance of the abatement notice and order, a
14 praecipe with the county clerk to initiate a sheriff's sale, in
15 accordance with the procedure set forth in IC 32-29-7-3(b). The
16 foreclosure judgment holder may avoid the civil penalties for
17 which the foreclosure judgment would otherwise be liable by
18 providing, not later than one hundred eighty (180) days after the
19 date of issuance of the abatement notice and order, evidence to the
20 enforcement authority that the foreclosure judgment holder has
21 met either or both of the following:

22 (1) The exception set forth in this subsection.

23 (2) The conditions set forth in subsection (a).

24 (c) During the one hundred eighty (180) day period described in
25 subsection (b), the enforcement authority may not impose any civil
26 penalty against a foreclosure judgment holder that would
27 otherwise apply under subsection (a) or (e). If, after the one
28 hundred eighty (180) day period described in subsection (b), the
29 foreclosure judgment has not provided evidence to the enforcement
30 authority that the foreclosure judgment holder has met:

31 (1) the exception set forth in subsection (b);

32 (2) the conditions set forth in subsection (a); or

33 (3) both subdivisions (1) and (2);

34 the enforcement authority may impose any civil penalty that would
35 have applied under subsection (a) or (e) during the one hundred
36 eighty (180) day period described in subsection (b), in addition to
37 any civil penalties that accrue after the one hundred eighty (180)
38 day period described in subsection (b), subject to the annual limit
39 on civil penalties set forth in subsection (e).

40 (d) If a foreclosure judgment holder files a praecipe with the
41 county clerk to initiate a sheriff's sale within the time specified in
42 subsection (b) and subsequently cancels the sale at any time before

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the date of the scheduled sale, the foreclosure judgment holder is liable for any civil penalties that otherwise would have applied under subsection (a) or (e) during the one hundred eighty (180) day period described in subsection (b), in addition to any civil penalties that accrue after the one hundred eighty (180) day period described in subsection (b), subject to the annual limit on civil penalties set forth in subsection (e). In addition, the foreclosure judgment holder may be liable for any costs that:

- (1) are actually incurred by the sheriff in preparing for the sheriff's sale before its cancellation;
- (2) are not covered by the administrative fee described in IC 32-29-7-3(h); and
- (3) would have been payable from the proceeds of the sale under IC 32-30-10-14(1).

~~(b)~~ (e) If the structure continues to remain a vacant structure beyond the initial ninety (90) days described in subsection (a) and the owner or foreclosure judgment holder does not meet any of the exceptions set forth in ~~this section~~, **subsection (a) or (b)**, the enforcement authority may continue to assess penalties ~~each year~~ on each structure in the following amounts:

- (1) One thousand dollars (\$1,000) for the second ninety (90) calendar day period each structure remains a vacant structure or an abandoned structure.
- (2) One thousand five hundred dollars (\$1,500) for the third ninety (90) calendar day period each structure remains a vacant structure or an abandoned structure.
- (3) Two thousand dollars (\$2,000) for the fourth ~~and each subsequent~~ ninety (90) calendar day period ~~thereafter~~ each structure remains a vacant structure or an abandoned structure.
- (4) Five thousand dollars (\$5,000) for the fifth and each subsequent ninety (90) calendar day period thereafter each structure remains a vacant structure or an abandoned structure.**

A civil penalty under this subsection may not exceed five thousand dollars (\$5,000) per structure per year, **as measured from the date of the abatement notice and order issued under section 9 of this chapter.**

(f) A civil penalty collected under subsection (a) or (e) shall be deposited in:

- (1) an unsafe building fund established under IC 36-7-9-14; or**
- (2) any other fund or account specified in the rules and procedures adopted by the legislative body under section 7 of**

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1 **this chapter.**
2 **(g) If any civil penalties assessed against a foreclosure judgment**
3 **holder under subsection (a) or (e) remain unpaid after a**
4 **subsequent sheriff's sale of the property is conducted in connection**
5 **with the foreclosure action, the unpaid civil penalties shall be paid**
6 **from the proceeds of the sheriff's sale, as specified in**
7 **IC 32-30-10-14.**
8 **SECTION 7. An emergency is declared for this act.**

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